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TOWN CLERK
ADAMS MASS.

MEETING MINUTES
TUESDAY, APRIL 10, 2018

MEMBERS PRESENT: Chairman Peter West, and Members Francie Riley, Michael Mach, Glen Diehl, Anthony Donovan and Jacob Levesque

MEMBERS ABSENT: Vice-Chairman Brian Tenczar and Member Rob Krzanik

OTHERS PRESENT: Adams Selectboard, Christine Hoyt; Attorney Christine Pikula; Linda Cernik; Scott Cernik; Peter Greenbush; Building Commissioner Don Torrico and Recording Secretary, Pam Gerry

CALL TO ORDER: Chairman West called the meeting to order at 6: 08 P.M.

Application of Mr. Edward MacDonald and Quick and Easy Roll Off for property located at 115 Howland Avenue requesting an administrative appeal under Zoning Bylaw §125-3 (B.)(3)(a) of the Building Commissioner's determination that garaging and parking of solid waste containers require a Special Permit.

Chairman West invited Attorney Pikula to address the Board members.

Chairman West addressed Building Commissioner Torrico to ask him if he could explain his findings during the site visits performed at the property located on 115 Howland Avenue. Mr. Torrico began by stating that he had performed several site visits over the past few months based on various complaints that were made to his office. He stated to the members that the Board of Health Office had also spoken with Mr. MacDonald requesting him to remove the dumpsters from the front of the property and the back of the property which contained solid waste. Building Commissioner Torrico submitted three photos from his site visits for the board's review which he stated were performed on January 23, February 14 and February 20, 2018, where he observed dumpsters containing mattresses on site. The board took a moment to review these documents with him. Member Diehl wanted Mr. Torrico to know that he personally observed these dumpsters containing mattresses on November, 2017, as well. Mr. Torrico emphasized to the members that the mattresses observed in the dumpsters were "solid waste," as defined by DEP. Mr. Torrico referred to the town's zoning bylaws to review §125 Attachment 1:5. He explained to them that he felt this business would be classified under "solid waste or a transfer facility, that temporary structures and uses not conforming to this chapter would be categorized under Industrial Uses with a Special Permit." He further noted that on July 12, 2016, the Zoning Board of Appeals revoked the Special Permit granted to the property owner to operate freight and transportation facility which he noted was currently delinquent on the taxes owed. Mr. Torrico stated to them that the adoption of the town's general law stated that if back taxes are owed on a property that a permit was not allowed to be issued. In response to Mr. Torrico's statement, Chairman West told the board members that "we should have no commerce at this building because of the back taxes and no one has applied for a permit to be in this building." He informed the members that the owner had a small shop in the back of the building where he performed repair work on vehicles, noting that "we felt we did not have the right to force him out of that space."

Chairman West stated that it was “clear that no matter how we look at this, calling it a junk yard, or a dump, it’s clearly being used as a transfer station since the material is not coming from the building.”

Mr. Torrico stated that he wanted to submit an exhibit of the definition from 310 CMR, (DEP) Department of Environmental Protection on Solid Waste. He reads the definition to the members. He stated that this definition would define “transporting mattresses to this facility.” He read the DEP’s definition of a transfer station, as well. He told them that this use of property “definitely requires a Special Permit.” He wanted the members to know that Mr. MacDonald had never been cited with fines however “we wanted to move forward by “working things out.”

Chairman West addressed Attorney Pikula to ask her where Mr. MacDonald registered his “Quick and Easy Roll Off” business. Ms. Pikula responded to him by stating that his business was operated out of the house at 69 Melrose Street, Adams, MA. She wanted the board members to know that her client was only storing the dumpsters for rental purposes on the property at 115 Howland Avenue. Chairman West stated to Attorney Pikula that Mr. MacDonald had never received a Special Permit to operate a business out of a residence at this location. In response to Chairman West, she told him that her client was renting the dumpsters and leasing the space to store them at 115 Howland Avenue, “not operating as a transfer station.” Attorney Pikula stated to the members that at times the mattresses were stored at the property because one of “their trucks were broken down.” She stated to them that they were allowed to store the dumpsters by right under Industrial Uses in the town’s zoning bylaws under Schedule 1-4; “bulk storage and warehousing,” which was a by right use which did not require a Special Permit. She stated to them that the town does not have a definition in their bylaws for “bulk storage or warehousing.” Chairman West wanted Attorney Pikula to know that he viewed the use of the property as “a dump” under “Industrial Use” in the town’s bylaws. He told her that when the dumpsters remain full and they are not being emptied, that it was clear that these dumpsters appear to be leased whereby the garbage remains on site. Chairman West emphasized to Attorney Pikula that Mr. MacDonald cannot operate a business out of the property that has delinquent taxes. He stated that he was also operating a home business in a residential area without a Special Permit for a “Home Occupation.” Chairman West stated to her that “he would not have a problem issuing a Special Permit for the property on 115 Howland Avenue if there was not the issue of tax delinquency to be addressed. Attorney Pikula stated to him that based on the Building Commissioner’s decision, she wanted it noted that the citation issued to the applicant was defective, stating to them that it was issued on January 22, 2018, and the inspection was performed January 23, 2018, as well as it being cited as a solid waste transfer facility while the public notice stated “determination that garaging and parking of solid waste containers require a Special Permit.” Attorney Pikula stated that based on this information “not matching up,” she requested that the board members withdraw the notification. Chairman West addressed Attorney Pikula to let her know that the affidavit filed with the Zoning Board by Mr. MacDonald should have been witnessed before being presented to the Board members and it was “not acceptable.” She explained to him that they are not required to be witnessed.

Member Mach stated to Attorney Pikula that “there should be no business what so ever on the property at 115 Howland Avenue. He explained to her that Mr. Dellaghelfa, owner of the property owed back taxes and was issued a Cease and Desist order by the Town of Adams for operating a business. Chairman West stated that it was unfortunate that Mr. MacDonald wanted to operate a business out of property that belonged to “an irresponsible property owner and should not have any reflection on him.”

In closing, Building Commissioner Torrico wanted to clarify Attorney Pikula's statements. He concluded by stating to the members that the citation he sent to the applicant was drafted on January 22, 2018, stamped on January 23, 2018 by the Adams Post Office after his site visit was conducted. Chairman West emphasized to the Attorney Pikula that "we can't issue a Special Permit to operate in that building until the owner pays the taxes; it's as simple as that."

Chairman West opened the meeting to the public.

Linda Cernik, a resident of 3 Godek Street addressed the Board members to let them know that the applicant's business was affiliated and registered with the state under the name of "Donna MacDonald." Ms. Cernik wanted to know if she would be present in the future to apply for a permit to operate this business. Attorney Pikula responded to her by stating that this issue was not on the agenda for the current meeting. She continued by stating that the mattresses at the Howland Avenue location had been on site since August, 2017. She emphasized that this activity would classify as a transfer station. Mr. Cernik requested that Ms. MacDonald be present at the next Zoning Board meeting. Chairman West answered her by stating that Attorney Pikula was representing the applicant and Ms. MacDonald was not required to be present. In closing Ms. Cernik stated that she was concerned that a business that owed back taxes should not be allowed to operate. She wanted the Board members to know that she thought "the property looked fantastic" while traveling on Rt. 8 and thanked them for their efforts.

Chairman West asked if there were any further requests or correspondence for the applicant.

Chairman West stated to the members that they needed to vote on the administrative appeal. He requested some clarification for the formatting of this vote. Mr. West addressed Christine Hoyt, Adams Selectboard seated in the audience questioning her as to the presence of legal counsel for guidance with their Zoning Board cases. Ms. Hoyt stated to him that she understood that an individual was hired for this purpose but she would confer with Interim Town Administrator, Donna Cesan and get back to the Board members at a later date with future details.

Attorney Pikula requested that the Board members withdraw the defective citation; Exhibit A and the Exhibit B violation which did not match the public hearing notification while she added that storing dumpsters was allowed by right in Industrial Uses.

Chairman West stated that he had "a problem knowing that the owner of this business was the Assessor for the Town of Adams who should be aware of the fact that a business in town was not allowed to operate in a building that owed back taxes. He explained to Attorney Pikula that the business was required "to be out of there immediately because you cannot operate any commerce in that building because of the tax problem."

A motion made by Member Mach, seconded by Member Diehl to grant the application of Mr. Edward MacDonald and Quick and Easy Roll Off for property located at 115 Howland Avenue requesting an administrative appeal under Zoning Bylaw §125-3 (B.)(3)(a) of the Building Commissioner's determination that garaging and parking of solid waste containers require a Special Permit was denied and the motion failed with Chairman Peter West and Members Francie Riley, Michael Mach, Jacob Levesque and Glen Diehl unanimously voted five (5) not in favor of the request for an administrative appeal.

Board members determined that the administrative appeal be denied based on back taxes owed to the Town of Adams and a Cease and Desist Order which was placed on the property.

OLD BUSINESS/NEW BUSINESS: Chairman West stated to the members that the owners of E-pod Transportation LLC submitted their engineer plans for the expansion of their livery business at 26 Overlook Terrace as requested by the Zoning Board members at their last meeting of March 27, 2018 which he stated had complied with one of the conditions of the Special Permit that was issued to them. Chairman West commended the applicant's for responding to the board's request in a timely manner. Chairman West mentioned to the members that the applicants were approved to park 19 cars however according to plans that stated 24 cars would be parked, the applicant's did let Chairman West know that five of the requested spaces would be removed on the plans.

Board members were asked if they could schedule their next meeting for the 4th Tuesday of May, 2018. The Zoning Board scheduled the meeting for May 22, 2018 at 6:00 P.M.

Chairman West thanked the Selectboard for the newly appointed members to the Zoning Board of Appeals. Member Mach stated that he would like the Board of Selectmen to consider removing one of the board's alternate members who had not appeared for meetings in several years, to create an opportunity for them to appoint an active member.

APPROVAL OF MINUTES: The minutes of March 27, 2018 were tabled to the next scheduled meeting of May 22, 2018.

ADJOURN: A motion made by Member Mach, seconded by Member Riley to adjourn the meeting at 6:48 P.M., passed unanimously.

Respectfully Submitted,


Pamela Gerry, Recording Secretary

6-11-18
Date